

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS LOVELL GREGORY,

Defendant-Appellant.

UNPUBLISHED

August 11, 2000

No. 206312

Washtenaw Circuit Court

LC No. 96-005921-FH

Before: Owens, P.J. and Murphy and White, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I dissent from the majority's conclusion that there was insufficient evidence to convict defendant of breaking and entering. Although I agree with the majority that 1) the cases consistently hold that the unexplained possession of recently stolen property, unaccompanied by other facts and circumstances, may constitute evidence of larceny,¹ but is insufficient to sustain a conviction of breaking and entering, and 2) the other facts and circumstances held sufficient to sustain a conviction of breaking and entering have been those that linked the accused to the scene of the breaking and entering, I nevertheless conclude that there was evidence of other facts and circumstances in the instant case sufficient to sustain the conviction of home invasion.

The issue is whether there was sufficient evidence to justify the conclusion that defendant was involved in the actual break-in of the home, rather than just a person who received, concealed and sold the stolen items. Where a person is found with property recently stolen in a burglary, and there are no other facts or circumstances, there is nothing to link the person with the burglary, except the possession of the property, and the manner in which the person obtained the property is unknown. In the instant case, however, defendant was found in possession of property from five different burglaries, all committed in the same neighborhood in a similar fashion.² The possession of property from each of

¹ The distinction between the inference that the possessor obtained the items through theft and the inference that the possessor obtained the items through burglary is somewhat obscure where the items were stolen in a burglary.

² I see no error in the trial court's admission of the similar acts evidence to link the various burglaries together, and defendant to them through possession of the stolen items.

these burglaries establishes a link to the burglaries themselves, or at least a connection to the burglar, that is not present in the typical case where the accused possesses recently stolen property from a single burglary. That is, while it may be pure speculation to assume that the person possessing stolen property had anything to do with the circumstances of its initial theft, where the person possesses property from five burglaries, all committed in a similar fashion, the inference that the person has some connection with the burglaries or the burglar is justified because it is unlikely that the person just came upon the stolen property on five different occasions.³

The question remains, however, whether there is evidence to support the inference that the person possessing property from the five burglaries is the burglar, and not simply the fence. In the instant case, there was evidence concerning items stolen from the various burglaries, items sold by defendant to various jewelers and dealers around town, and items found in defendant's apartment. For example, a black briefcase with a roll of tape inside was stolen in one of the burglaries. The briefcase and tape were found in defendant's apartment. A reasonable jury could conclude from the nature of the items sold by defendant and those found in his apartment that defendant was the burglar, and not the fence, because a burglar working quickly might take an item like a briefcase, hoping that something valuable is inside, but a fence would not accept such an item or a roll of tape from the burglar. There were other items of the same nature found in defendant's apartment. I therefore conclude that there were other facts and circumstances, in addition to the repeated sale of recently stolen items, sufficient to support defendant's conviction of home invasion.

I concur with the majority's discussion of the remaining issues.

/s/ Helene N. White

³ The evidence showed that in several instances defendant was possession of stolen items the same day as the burglary, and before the next burglary. Thus it was established that defendant did not receive all of the items at one time. This makes it more likely that defendant had a direct connection with each burglary, rather than a single interaction with someone who had stolen or otherwise obtained the stolen items.